

MEMBER, SWORN.

Mr. A. Gopala Menon (*Director of Public Instruction*) took the oath and signed the Rolls.

LEGISLATIVE BUSINESS.

THE TRAVANCORE CHILD MARRIAGE RESTRAINT BILL.

PRESIDENT : Where do we stand, Mr. Legal Remembrancer?

MR. PUTHUPALLI S. KRISHNA PILLAI : We are at the third reading of the Bill.

PRESIDENT : I suggested that there should be a conference.

MR. PUTHUPALLI S. KRISHNA PILLAI : There does not appear to have any conference held. Both parties have sent up amendments which have been admitted. We may proceed with the discussion of those amendments.

PRESIDENT : Has the Legal Remembrancer looked into what is called the drafting side of the amendments?

MR. PUTHUPALLI S. KRISHNA PILLAI : No, Sir. But if the amendments are admitted there will be nothing wrong in the form.

SRIMATI T. NARAYANI AMMA (*Nominated*) : Sir, in the light of the discussion that took place at the last meeting of the Assembly on my amendments and especially in view of the difficulties pointed out by the Chair, I beg to move the following amendment to clause 11 :—

"In Clause 11, line 2, for the word "family" substitute the word "marriage" and after the words "in that behalf" and before the word "within" in line 3, add the following "by the legal guardian of the bride or bridegroom whoever is a child".

PRESIDENT : The honourable member will very kindly read the clause as amended.

SRIMATI T. NARAYANI AMMA : The clause amended will read thus :

"Our Government may, by notification in the Government Gazette exempt any marriage in Travancore from the operation of this Act, on application made in that behalf by the legal guardian of the bride or bridegroom whoever is a child within six months of the passing of this Act."

Sir, I do not think that a long speech is necessary in support of this amendment. I have already pointed out at the last meeting of the Assembly why I object to the word "family" in the new clause *viz.*, clause 11, added to the bill. There are also legal difficulties to which the Chair has drawn the attention of the House. The amendment I have moved will obviate those difficulties and I am sure it will satisfy the sentiments of those honourable members who wanted such an exemption clause. All that I want, Sir, is that the effect of this bill should not in any way be nullified by clause 11. I may be permitted to point out, in this connection, that such an exemption clause does not find a place in similar Acts passed elsewhere on the subject. In the matter

[Srimati T. Narayani Amma.]

of education and enlightenment, Travancore stands foremost of all the Indian States and Provinces and it will not redound to the credit of our State if in legislating on an important piece of much needed social reform we add any clause that will nullify the effect of this Bill. As regards the *bona fide* object of those who want such an exemption, I fully trust that this amendment will serve the purpose. With these words I commend this amendment for the unanimous acceptance of this House.

MR. JOSEPH VITHAYATHIL (*Kunnatnad cum Parur*): Sir, I rise to a point of order. Is it in order to bring forward an amendment at this stage without the permission of the Dewan?

PRESIDENT: Permission was given on the last occasion. Is there anybody to second the motion?

SRIMATI DEVAKI ANTHARJANAM (*Nominated*): I second it.

MR. P. S. NILAKANTA AIYAR (*Co-opted*): Sir, I oppose the amendment. The Section as amended will read like this:

"Our Government may, by notification in the Government Gazette, exempt any marriage in Travancore from the operation of this Act on application made in that behalf by the legal guardian of the bride or bridegroom, whoever is a child, within six months of the passing of this Act".

It can be seen that this amendment makes the exemption operative only for six months when it says the application will have to be made by the legal guardian of the bride or bridegroom, whoever is a child, apparently after the marriage is settled. Therefore this exemption applies only to marriages to be celebrated within six months of the passing of this Act. The original idea was to exempt families who had only to make applications within six months of the passing of this Act, whether marriages have been settled or not. To get exemption permanently, applications have to be made on behalf of that family within six months of the passing of this Act. Honourable members may be aware that the original amendment was that certain communities should be exempted from the operation of this Act. It is only as a compromise that the word "family" was accepted. By this amendment, even the restricted exemption accepted as a compromise is being taken away as it is made applicable only for 6 months and that in respect of particular marriages and not families. Practically, therefore, no benefit of any exemption is derived by this amendment, after 6 months. By this amendment the purpose of the exemption clause is taken away and its object defeated.

PRESIDENT: The main matters connected with the bill have been discussed already.

What happened on the last occasion was that an amendment which was put forward was considered rather defective from the draftsman's point of view. What I suggested then was this:—

"Without attempting to choke discussion or deflect it, I am bound to point out, speaking for the moment purely as a lawyer that there are certain difficulties attendant both upon the amendment and

upon the bill, as it stands at this moment. It would not do, I think, for this honourable House to rush through and pass a bill and adopt certain formulae which may either be canvassed very strenuously in court or may lead to results which this honourable House had not in contemplation..... We ought not hurry and push through a particular portion of the bill which may not be regarded as conducive to the dignity and the legislative capacity of this honourable House. I am suggesting that because this House has waited so long and will be meeting again very shortly, honourable members may consider the matter more deeply and put forward their respective contentions."

I am sure that adequate legal formulae will be found and both sides could put forward arguments and the House may accept the best solution possible".

So, I do not think that we can again traverse the whole ground covered by the bill.

MR. P. S. NILAKANTA AIYAR: Sir, when the clause was inserted in the bill, the idea was that the principle of exemption was accepted by the House. But the object of this amendment is to grant no exemption, whatever, six months after the passing of the bill. So I have tabled another amendment to omit the words "within 6 months from the passing of this Act." The principle of exemption having been accepted it must be there. It should not be taken away by a side wind even after six months. The idea behind the amendment seems to be to take away even what was accepted as a compromise. So if the words "within six months" are taken away, as the granting of exemption is left to the discretion of Government, the exemption clause may be made beneficial. The mover of the amendment stated that there is no precedent elsewhere in India as regards exemption being granted. I can only point out that that statement is not correct. I find from the book, "Child Marriage Restraint Act" by Mr. Srinivasa Iyer, in similar Acts passed in Indore, Baroda, Rajkot and Mandi provision for exemption is made. The provision in Act II of 1938 i. e. Indore Child Marriage Prevention Act is as follows :--

"If the Magistrate and the majority of assessors are satisfied,

- (1) That if the proposed marriage were not sanctioned the parties would lose all chances of being married at all ; or
- (2) That the parents or guardians of the girl to be married are not likely to live owing to old age or disease till after the girl becomes a major and there is no other person fit to be guardian ; or
- (3) That any other difficulty equally unavoidable is likely to arise, the Magistrate shall accord permission in writing if the girl to be married has completed her 11th year of age."

So that it is wrong to say that there is no similar provision adopted elsewhere.

MR. M. SIVATHANU PILLAI: May I know whether the honourable member has any objection to allow these three grounds or which and which alone exemption can be granted in this bill?

MR. P. S. NILAKANTA AIYAR: We can't exhaust all the grounds. There may be difficulties which are likely to arise. The Act in Baroda contains an exemption on another ground.

MR. C. JEBAMONY NADAR: Will the honourable member kindly read the particular section of the particular Act?

MR. P. S. NILAKANTA AIYAR: I am sorry that I have not got a copy of the whole Act. I have only got relevant extracts here. The additional provision for exemption in the Baroda Act is this —

“There is no likelihood of consummation within one year of any of the couple being major.”

Further there may be the ground based on conscientious religious prohibition, so that there are various grounds for exemption and to consider these, discretion is vested in Government. Sir, when the lady member moved her amendment last time, she spoke thus: The word family is a wide one and if any family can be given exemption a large number of people can manage to be outside the purview of the law..... If in exceptional cases exemptions are found necessary the purpose will be amply served by exempting the individuals concerned. Thus we see then she had no objection to individual exemptions.

Now the effect of the exemption clause is wholly taken away after six months from the date of the bill. That is going against even the very principle of exemption which was accepted before by the house. No special sanctity is attached to the marriages which take place before 6 months of the passing of this Act. In that case we can even omit the exemption clause altogether.

MR. KAINIKKARA M. PADMANABHA PILLAI (*Changanacherry cum Peermade*): May I know, Sir, whether the honourable member is opposing the amendment or supporting it?

MR. P. S. NILAKANTA AIYAR: My two amendments of which I have given notice would show that I want to retain the word “family” and if that is not acceptable at least to omit the words “within six months from the date of the Act.”

MR. KAINIKKARA M. PADMANABHA PILLAI: May I know whether the amendment before the House is opposed or another amendment is proposed?

MR. P. S. NILAKANTA PILLAI: I oppose the amendment.

MR. JOSEPH VITHAYATHIL: Sir, I oppose the amendment. If this amendment is accepted the scope of the exemption clause will be very much reduced. That clause was the result of a compromise which was agreed upon more or less unanimously by the House. Some of the

honourable members who had tabled important amendments to the Bill withdrew those amendments as a result of this compromise. I do not think that it is proper to re-open the matter at this stage.

Now, Sir, at the third reading stage of a bill amendments can be moved only with the special permission of the Dewan except in the case of amendments moved on behalf of Government. This permission is generally granted only for the purpose of correcting mistakes, avoiding contradictions or removing ambiguities. I concede, Sir, that the word 'family' as used in the clause is rather ambiguous, especially when it is made applicable to different communities. It is desirable to remove that ambiguity. But the effect of accepting this proposed amendment will be to materially alter the exemption clause and to substantially reduce its scope. Under the clause as it stands if an exemption is granted in favour of a family on application made within six months of the passing of the Act it enures to the benefit of all the members of that family for ever. But according to the amendment only marriages in respect of which applications are made within six months can get the benefit of the exemption. If the honourable member is prepared to take away the time limit I shall have no objection in accepting the amendment.

PRESIDENT: Is it not better to discuss this under the next amendment to be moved by Mr. Nilakanta Iyer which is specific with regard to the time limit?

MR. JOSEPH VITHAYATHIL: But then, Sir, Mr. Nilakanta Aiyar wants to retain the word 'family' in his amendment while he wants to take away the time limit. I am saying that I shall have no objection in substituting the word 'marriage' for the word 'family' provided that the time limit is taken away. My point is that we should not, at this stage, materially alter the scope of the exemption clause which was arrived at as the result of a compromise. Any such alteration will be unfair and the procedure will be highly improper.

MR. N. RAMAKRISHNA PILLAI (*Vaikom cum Kottayam*): The effect of this amendment is to nullify the whole object of the exemption. The difficulty arises on account of the substitution of the word "marriage" for the word "family". So long as the word "marriage" is retained the time limit is meaningless and serves no purpose, and makes the purpose of the exemption illusory. If on the other hand the word "family" is retained there will be no objection to retain the expression within 6 months. The word "family" in that case will have to be defined. Perhaps that is the reason why Mr. Nilakanta Aiyar has proposed his alternative amendment. It seems to me that if the word "marriage" is substituted for the word "family" then certainly the expression "6 months after the passing of the Act" will have to be taken away. With these words I oppose the amendment.

MR. C. JEBAMONY NADAR: Sir, I rise to support the amendment moved by the honourable member who is in charge of the Bill. In

[Mr. C. Jebamony Nadar.]

doing so I would read some relevant portions from a commentary of the British India Child Marriages Restraint Act. At page 22 of the book the following opinion is expressed :—

“In order to effectively eradicate the evil of child marriage further legislation is necessary. With a view to save the innocent victims from a life-long misery, the Legislature should go to the full length of declaring child marriages invalid regardless of the foolish susceptibilities of the daily dwindling ranks of the orthodox”.

The learned author goes on further and says “in order to check the delay”.....

PRESIDENT : Who is the learned author or authoress ?

MR. C. JEBAMONY NADAR : Tek Chand, Advocate, Lahore High Court and Lecturer, University Law College, Lahore.

PRESIDENT : And the other gentleman ?

MR. C. JEBAMONY NADAR : H. L. Sarin, Advocate, High Court, Lahore.

PRESIDENT : These gentlemen Tek Chand and H. L. Sarin may be very eminent men but their opinion cannot be quoted in this honourable House. My honourable friend's opinion can be quoted and can be very useful. What I would suggest to the honourable member is not to quote the opinion of Mr. Chand or Mr. Sarin, however eminent they may be. I have not had the good fortune to know the names of any of these gentlemen. Their opinion cannot be quoted as a legal authority. But if the honourable member reads out portions from that commentary and says “it is my opinion” then we can accept it as you are an honourable member of this House (*Laughter*).

MR. C. JEBAMONY NADAR : I fully agree with the opinion of the learned authors.....

PRESIDENT : Or, rather you find your opinion expressed in this manner. (*Laughter*)

MR. C. JEBAMONY NADAR : Yes, Sir.

In fact, in British India, the Home Member wanted that one year must elapse before the Bill should come into operation.

MR. N. RAMAKRISHNA PILLAI : May I know whether the principle of the Bill was not agreed to by this House on former occasions ?

MR. C. JEBAMONY NADAR : Yes, Sir. I don't question that. What Mr. Sarda, the mover of the Bill, says regarding that matter is this,

“But though the Government became convinced that, for its good name, it must help in passing the measure into law as speedily as possible, the honourable Home Member was so afraid of the displeasure of the orthodox people in India, who are against all change, that he proposed to allow a period of twelve months before bringing the law into force, in the hope that the orthodox people would in the meantime become reconciled to the legislation and having come to know of the enactment would not break it. It was only on my protests and the pressing representations of the supporters of the Bill that the delay would greatly aggravate the

evil, that the Home Member agreed to shorten the interval to six months. How disastrous was the result of post-poning the coming into force of the Bill is known to all".

Of course the result was that within the 6 months the record number of child marriages were conducted within British India. Afterwards when the law came into operation people from British India went over to the neighbouring native States and conducted child marriages. What I want to say is in British India, a similar question was raised and they came to the conclusion that the operation of the Bill should be delayed only for six months. Therefore, I appreciate the honourable mover in her liberal amendment allowing that period for application for exemption.

MR. JOSEPH VITHAYATHIL : Is there any such clause in the British Indian Act ?

MR. C. JEBAMONY NADAR : Yes, Sir. Regarding the time when it shall come into force, it is enacted there that it shall come into force on the first day of April 1930, though the Bill was passed six months ago.

I am not however ignoring the difference between "exemption" under our Act with the question of postponing the operation of the Act in the British Act. They have not got the provision for exemption.

MR. N. RAMAKRISHNA PILLAI : May I know whether this principle was not conceded by this House on a former stage ?

MR. C. JEBAMONY NADAR : All that I want is that the law to be passed should not be a dead letter. Since the amendment proposed is in accordance with the trend of the British Indian Legislation, I support the motion.

PRESIDENT : Any other wishing to offer any remark ?

SRIMATHI T. NARAYANI AMMA : Sir, I want to offer a few remarks by way of reply.

PRESIDENT : Yes.

SRIMATHI T. NARAYANI AMMA : Sir, the honourable member Mr. P. S. Nilakanta Iyer referred to some thing about Baroda and he wanted to follow the example of Baroda in this matter. But the conditions in Travancore are far different from those in Baroda and moreover, I am glad to reiterate the argument, that Travancore stands foremost in all healthy social legislation, so much so, if the exemption is carried it will be a sort of stain upon the fair name of Travancore. When post-puberty marriage has become the order of the day, I fail to understand why we should reserve a provision enabling people to evade the provisions of the law and marry their children before they attain marriageable age. I appeal to the honourable members of this House who are fathers and brothers to vote in favour of this amendment.

Motion put and carried.

MR. P. S. NILAKANTA AIYAR : Sir, I move

"in Section 11, omit the words 'within six months of the passing of this Act' occurring at the end".

[Mr. P. S. Nilakanta Aiyar]

Now, the word "family" has been substituted by the word "marriage".

As I said before the principle of granting exemption from the operation of the Act has been recognised by this House in the second reading of this Bill. Now the word "family" has been substituted by the word "marriage". By the acceptance of the amendment made by my friend just now the exemption will last only for 6 months after the passing of the Bill, as apparently the marriage has also to be settled before the exemption is applied for, which would be seen from the provision as to persons who have to apply for the exemption. "Within the period of six months" was introduced with a view to enable the heads of families to apply for exemption which when once granted will enure for all time to come, to the benefit of all its members. The word "marriage" has now been substituted for "family". Therefore unless the words "within six months" are taken away, the Bill will amount to saying that no exemption at all will be given for marriages to take place after six months. This is also against the compromise arrived at, between the parties on the prior occasion of the second reading of the Bill. Therefore I submit that the words "within six months of the passing of the Act" be deleted.

MR. N. RAMAKRISHNA PILLAI : Sir, I second the motion.

I am prepared to accept the original expression if the words "within six months" are omitted. Practically the House had conceded on a former occasion that a general exemption should be granted in favour of certain families. The difficulty then was with regard to the suitable expression that will achieve this object. Now, since the object is to provide a general exemption the retention of the expression "within six months of the passing of the Act", will practically nullify the exemption conceded by this House, because instead of the word "family" the word "marriage" has been substituted and accepted by the House. That means curtailment of the time limit thereby making the exemption useless. The word family could have been retained, and any difficulty arising therefrom removed by an explanation of the word "family". But now the word marriage has been substituted. Hence unless this expression "within six months" is deleted the exemption granted becomes practically useless, and for this reason I support the amendment to omit the expression "within six months of the passing of the Act."

SRIMATI T. NARAYANI AMMA : Sir, I oppose the amendment. I have heard the Legal Remembrancer, say, when sponsoring his bills, that there should be uniformity in the matter of legislation in Travancore and British India. Travancore forms part of entire India and whatever that is good for British India must necessarily be good for us also. Moreover, marriage is not a matter of life and death and it can be made to wait till the girl attains 14 and the boy 18. Sir, marriage is not a life and death problem and it can be delayed.. ..

PRESIDENT: Marriage, no doubt, is not a problem of life and death, but I am only concerned with this, that in the third reading of the Bill what should be done is that as far as possible the principle already agreed upon by the House should be implemented. What was the actual compromise arrived at between the parties? The Legal Remembrancer and Mr. E. Subramonia Iyer, who is not found in his seat to-day, were asked to draft an amendment. There was certain trouble arising out of the amendment and it was adjourned. The only question is what was the agreement or the basic principle on which that kind of compromise was arrived at and the amendment was made. If the honourable members's amendment is in consonance with that, it must be given effect to and I should like to know exactly from the Legal Remembrancer, one of the two parties to the amendment, what was the compromise.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, clause 11 was adopted as a matter of compromise. It was drafted here in the Assembly itself and it was put to the Assembly and the House adopted it. The idea was to grant exemption in favour of families. The result of that would be that, once exemption is granted in favour of the family, all members of the family would be enjoying the exemption for ever and for ever. It would enure for generations. But the only condition was that, in order that a family may be thus benefited, an application has to be made within six months. This was the restriction that was imposed. It was then found that the word "family" was misleading and would give room for controversy. Question was raised as to "what is to happen in the case of a Mohammedan family?" Whether the privilege obtained by the application will be available for generations to all those who are descended from the family? What is to happen when a family is divided. These were the questions which were subsequently discussed. Mr. E. Subramonia Iyer was also a party to the discussion and it was found that the clause required some amendment. The amendment that has therefore been made is to avoid the ambiguity involved in the expression "family". At the same time it should be to preserve or retain as much of the privilege as was agreed upon. If Srimati Narayani Amma's amendment is accepted, there will be exemption only in favour of specific marriages and the exemption in favour of families originally contemplated will disappear. The exemption that is sought to be made available by the amendment for a period of 6 months can be had by postponing the final adoption of the Act for 6 months and the purpose will be achieved without an amendment. That means that after 6 months no child marriage can take place even though it may be necessary in the interest of the child or the person marrying. Therefore the retention of the words "within 6 months from the commencement of the Act" after Srimati Narayani Amma's amendment has been accepted, would be to curtail completely the principle originally agreed upon by the House. After considering the amendments proposed by the two honourable members I was of the opinion that we would be keeping up the principle adopted in clause 11.

[Mr. Puthupalli S. Krishna Pillai.]

if we adopt the amendment now proposed by Mr. Nilakanta Aiyar, namely, for the omission of the words "within six months of the commencement of the Act." The result is that when a child marriage is to take place, the party has to apply to Government, get previous permission and then perform marriage. My own impression is that the member in charge of the bill is opposing this amendment probably on the ground that it will be a privilege that will be available for ever if the amendment is accepted. It was in contemplation when clause 11 was adopted. My submission is that the omission of the words suggested by Mr. Nilakanta Aiyar is not in any way likely to impair the efficacy of the Act.

PRESIDENT : Order, order. I do not think the honourable member can go into details. The whole question is what was the compromise arrived at on the basis of which at the stage of the third reading a certain amendment was sought to be put in.

MR. PUTHUPALLI S. KRISHNA PILLAI : The compromise was that any family in Travancore may apply for exemption and an exemption so obtained shall enure to the benefit of all members in succession in that family for ever.

PRESIDENT : That is the view of the Legal Remembrancer in regard to the compromise. I should like to know from any honourable member if his views differ from the Legal Remembrancer's. Otherwise I have to give effect to the compromise.

MR. KAINIKKARA M. PADMANABHA PILLAI : Sir, I may be permitted to put in a word. The amendment as was passed the other day, and the amendment as is passed to-day both recognise the fact that there might arise occasions which would justify the necessity for granting exemptions. There might be really hard cases. According to the amendment as it stood the other day, the fear was that it might practically and effectively nullify the whole Bill. That was why Srimati Narayani Amma was perturbed over the other amendment. Even now she admits the necessity for exemptions for a period of six months.

PRESIDENT : Order, order. I take it that after a considerable amount of discussion there was a compromise arrived at on the floor of the House, and whatever the mover's idea was, that compromise was given effect to. Is there any doubt about that?

MR. KAINIKKARA M. PADMANABHA PILLAI : No, Sir. What I want to put is that once it is admitted that necessity for exemption might arise within six months, I do not see why the necessity may not arise even after six months. I would therefore request the mover to agree to the suggestion of Mr. Nilakanta Aiyar and delete the words "within six months after the commencement of the Act."

SRIMATI T. NARAYANI AMMA : I accept the amendment.

Mr. B. S. Nilakanta Aiyar's amendment was put to vote and carried.

SRIMATI T. NARAYANI AMMA: Sir, I beg to move that the Bill as amended by the Select Committee and as further amended by this House be passed.

In doing so, I wish to express my sincere thanks to all the honourable members of this House as well as of the old Assembly and especially to the Law Member and the present Legal Remembrancer, for the help and support that I have received in passing this Bill. I wish to express my sincere thanks to Mr. Kottoor Kunjukrishna Pillai who piloted my other Bill, the Travancore Hindu Widows Remarriage Bill in the other chamber, and who may pilot this Bill also in the Sri Chitra State Council. I wish to tender my heart-felt thanks to all the honourable members who opposed this Bill for the great courtesy they have shown to me. Sir, I fully believe that those who opposed the Bill were also actuated by the same honesty of purpose and high sense of duty as those who supported this Bill.

Sir, it is for the first time in the annals of the Travancore Legislature that a woman member has been enabled to introduce and pilot bills. Without arrogating to my humble self any credit therefor, I feel it my duty to state that it has been entirely due to the impetus that has always been given in this progressive State of ours to women's education and to the help and encouragement that educated women have always received at the hands of their cultured brothers in all other legitimate activities for social reform. I once again thank all the honourable members and beg to move that the Bill be passed.

SRIMATI DEVAKI ANTHARJANAM: I second it.

The question was put and carried. The Bill was passed.

PRESIDENT: I congratulate the honourable member on her legislative success.

THE TRAVANCORE KAMMALA BILL.

MR. N. RAMAKRISHNA PILLAI: I move that under Rule 30 of the Legislative Rules standing order No. 4—permission may be granted for the continuance of the Kammala Bill. The Bill was first introduced on 7th August 1936. The Bill lapsed with the prorogation of the first Assembly, and I took charge of it in August 1937. Mr. Velu Achari also introduced another Bill in November 1937. Both these Bills were referred to a Select Committee and they have been under the consideration of the Select Committee for a long time. About 276 witnesses have been examined by the Select Committee and the Committee has practically come to a conclusion on the main provisions of the Bill. On the question whether the Pandy Kammalars should be brought under the provisions of the Bill, the Select Committee has already decided that they need not be included.

MR. M. G. KESAVA PILLAI (Trivandrum Town): I second it.